IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 46 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

PUNAMCHAND LAXMICHAND SONI

Appearance:

1. Criminal Appeal No. 46 of 1991

MR K.P.RAVAL, ADDL.PUBLIC PROSECUTOR for Petitioner

MR PM THAKKAR for Respondent No. 1, 2

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.K.TRIVEDI

Date of decision: 14/07/98

ORAL JUDGEMENT coram: Bhatt,J.

In this acquittal appeal, the appellant State has questioned the judgment and order of acquittal of original accused Nos.1 and 9 of the charge under section

302 ,by invoking aids of provisions of section 378 of the Code of Criminal Procedure, 1973 (' the Code') .

Pursuant to the allegations in the prosecution case and the investigation, charge came to be framed against original 9 accused persons at ex.19 in sessions case No.286/1989 by the sessions court at Ahmedabad on 9.5 1990. According to the prosecution case, the accused persons hatched a conspiracy to illegally and to recover gold ornaments worth Rs. 3 lacs from the deceased who was working as a servant of respondent No.1-original accused No.1. Respondent No.2 is the son of respondent No.1 and he was accused No.9. .They will be hereinafter referred to as accused Nos.1 and 9. It was further alleged by the prosecution that the deceased was taken away and kept in illegal confinement during the period from 26.4.1989 to 3.6.1989 by the accused persons.It was also the prosecution case that abduction and illegal confinement of the deceased was to recover gold worth Rs 3 lacs and the accused persons had intention to put the deceased in fear of death and also to employ extortion and threats.

It was alleged that deceased Rikhavchand Hansaji Soni who was also earlier doing work of goldsmith was working as an employee of accused No.1 Punamchand who had a doubt that the deceased had taken gold worth Rs 3 lacs and therefore, pursuant to the conspiracy hatched by them, during the period from 30.4.1989 to 3.6.1989, the deceased was taken in Gopal Bhavan at DesaiPole, near Raipur ,Ahmedabad and confined him there.Thereafter, he was beaten and caused grievous hurt and it was also done pursuant to conspiracy hatched by the accused persons.

It was also alleged by the prosecution that on 3.6.1989, the deceased was taken to Block No.32 in Satyam Flat in Bapunagar,Ahmedabad and on the terrace, original accused persons had violently attacked the deceased which resulted into death of Rikhavchand . Thereafter, accused Nos.1 and 2 who are the respondents in this appeal tried to dispose of the dead body in their house known as GopalBhavan,DesaiPole, Khadia, Raipur,Ahmedabad and to conceal and screen the capital offence.

On the aforesaid version of the prosecution and the investigation, the charge came to be framed at ex.19 for the offence punishable under (i) section 120-B;(ii) sections 364 read with section 120-B; (iii) sections 348,330 read with section 120-B; (iv) 302 read with section 120-B as also under section 201 read with section 1209-B of the IPC.

Upon assessment of the evidence of prosecution and the facts and circumstances emerging from the record of the case, the learned Additional sessions Judge found only accused No.1 guilty for the offences under sections 201 and 343 and sentenced him to undergo R.I. for two years and fine of Rs. 1000/- and in default to undergo two months' R.I. for the offence punishable under section 201, whereas, he is sentenced to undergo R.I. for one year and to pay fine of Rs. 250/- and in default,to undergo one month's R.I. for the offence under section 343. Both the sentences were ordered to run concurrently.

Accused No.1 came to be acquitted from rest of the charges against him; whereas, other accused persons came to be acquitted of all the charges by judgment and order dated 19.9.1990. Therefore, the appellant State has questioned the legality and validity of the impugned order insofar as acquittal is concerned. It may be noted that respondent No .1 who came to be convicted for the aforesaid offences has not challenged it by filing conviction appeal.

We have been taken through the entire documentary and viva voce evidence in course of the submissions. After having examined the facts and circumstances emerging from the record of the present case and considering the testimonial collection, we are of the opinion that the view taken by the trial court in passing the impugned judgment and order cannot be said to be impossible.

It is settled proposition of law that in case of acquittal appeal under section 378, there are certain fetters which must be borne in mind while exercising the powers thereunder. In course of appeal, if it is found on appreciation of evidence that two probabilities or two views are possible and the view taken by the trial court is also posible,then in that situation,. ordinarily, it is not open for the appellate court while exercising its powers under section 378 of the Code, to set aside the judgment and order and to substitute its own finding or its own view.

The trial court has considered the entire evidence and has found that in the facts and circumstances emerging from the record,only original accused No.1-respondent No.1 in this appeal is guilty for the offences punishable under sections 201 and 343, IPC which has been challenged by the accused. Similarly, acquittal of accused Nos.2 to 8 of all charges has not been challenged by the State.

Merely because upon assessment of evidence, the appellate court in case of acquittal appeal reached a different conclusion other than the one under challenge , is also no ground sufficient to dislodge or quash the impugned judgment and order. Even the trial court's view ordinarily has to be accepted when that view is equally possible, more so, when the trial court has various other advantages while recording evidence likedemeanour of witnesses, observations of witnesses etc. Therefore, appellate court cannot interfere merely on the ground that another view is possible.

In our opinion,therefore, the view taken by the trial court is possible. Therefore, in light of the aforesaid celebrated proposition of law, we are not inclined to interfere with the impugned judgment and order of the trial court.

In the result, this appeal is dismissed. It has been stated before us that the sentence already imposed under the impugned judgment and order has already been undergone by accused No.1. Therefore, no further order is warranted.